

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KARL B. MANUEL,

Plaintiff,

V.

2:20cv1759

Electronic Filing

SUPERINTENDENT MARK

CAPOZZA, C/O JOHN DOE #1,

C/O JOHN DOE #2, C/O SGT. WILES,

C/O LT. DAILEY, MEDICAL

PROVIDER, M.P.A. DARLA

COWDEN, ASST. SUPERINTENDENT

ERIC ARMEL,

Defendants.

MEMORANDUM ORDER

This case is before the Court on a Report and Recommendation (“R&R”) filed by Magistrate Judge Kelly on November 2, 2023. The R&R recommends that plaintiff’s claims against Correction Officers John Doe No. 1 and John Doe No. 2 be dismissed without prejudice due to plaintiff’s failure to serve these defendants in accordance with Federal Rule of Civil Procedure 4(m). This recommendation is based in part on plaintiff’s failure to identify these defendants more specifically during discovery.

On May 15, 2023, an order was entered directing plaintiff to show cause why the John Doe defendants should not be dismissed for failure to effectuate service of the complaint. Plaintiff filed a response which highlighted the factual assertions for his claims against these defendants but did not otherwise address the failure to identify and serve them. The November 2, 2023, R&R followed. Plaintiff filed objections, which were received on November 20, 2023.

Plaintiff's "objections" are overruled. The court does not question the veracity of plaintiff's allegations that he was beaten and placed in a cell sprayed with "oleoresin capsicum"

nor his assertions that he suffered "extreme pain and discomfort [as well as] a multitude of mental, emotional distress" symptoms. Nevertheless, these allegations and assertion do not eliminate or otherwise excuse plaintiff's failure to identify and serve the John Doe defendants in a timely manner as required by Rule 4(m). Consequently, after *de novo* review of the record, the following order is entered:

AND NOW, this 27th day of December, 2023, IT IS ORDERED that the claims against defendants Correction Officer John Doe No. 1 and Correction Officer John Doe No. 2 be, and the same hereby are, dismissed without prejudice for failure to serve these defendants in accordance with Federal Rule of Civil Procedure 4(m).

The [86] November 2, 2023, Report and Recommendation as augmented above is adopted as the Opinion of the Court.

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

cc: Karl B. Manuel
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James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

(Via First Class Mail)

The Honorable Maureen P. Kelly
United States Magistrate Judge

(Via CM/ECF Electronic Mail)